

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 721,

Charging Party,

v.

SAN BERNARDINO COUNTY SUPERIOR
COURT,

Respondent.

Case No. LA-CE-43-C

Administrative Appeal

PERB Order No. Ad-416-C

August 26, 2014

Appearance: Atkinson, Andleson, Loya, Ruud & Romo by Jay G. Trinnaman, Attorney, for San Bernardino County Superior Court.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the San Bernardino County Superior Court (Court) of an administrative determination by the Appeals Assistant that its response to the statement of exceptions by Service Employees International Union, Local 721 (SEIU) was not timely filed.

BACKGROUND

On May 14, 2014, PERB's Appeals Assistant notified the Court by letter that because it had been served with SEIU's statement of exceptions by facsimile on April 14, 2014, and because PERB Regulation 32130(c)¹ does not allow for an extension of the 20-day period for filing a response to documents that are served in person or by facsimile, the deadline for filing

¹ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

its response to SEIU's exceptions was May 5, 2014.² Because the Court's response to SEIU's exceptions was not filed with PERB until May 8, 2014, the Appeals Assistant denied the Court's response as untimely filed.

The Court was informed that it could appeal the Appeals Assistant's determination to the Board itself within ten (10) days pursuant to PERB Regulation 32360. The Court timely filed an appeal of the administrative determination on May 22, 2014. SEIU did not file an opposition to the Court's appeal.

On appeal, the Court maintains that SEIU's facsimile service of its statement of exceptions was illegible and therefore defective. The Court admits that it received a legible electronic version of SEIU's statement of exceptions via e-mail on April 15, 2014, but claims that it had never formally agreed to accept service via e-mail in accordance with PERB Regulation 32140(b)(1). Therefore, according to the Court, the only perfected manner of service of SEIU's exceptions was via U.S mail on April 14, 2014, which extended the deadline for its response by five (5) days in accordance with PERB Regulation 32130(c). Therefore, according to the Court, the correct deadline for submitting its response was May 9, 2014, and it timely filed its response on May 8, 2014.

We have reviewed the entire record in this matter. For the reasons set forth below, we reverse the Appeals Assistant's determination.³ We find that the only perfected manner of service of SEIU's statement of exceptions was by U.S. mail. Therefore, the Court was entitled

² Since the 20-day period for filing a response to a document served on April 14, 2014, would have fallen on Sunday, May 4, 2014, the final date for filing was actually Monday, May 5, 2014.

³ PERB's Appeals Assistant was not informed of the defective facsimile service of SEIU's statement of exceptions. Her administrative determination was based on the assumption that facsimile service was perfected by SEIU and her calculation of the relevant filing deadline was correct under PERB's regulations for perfected facsimile service.

to the extra five (5) days pursuant to PERB Regulation 32130(c) to file its response in Case No. LA-CE-43-C.

DISCUSSION

With its appeal, the Court proffers the declaration of Jay G. Trinnaman (Trinnaman), authenticating the April 14, 2014, facsimile transmission of SEIU's statement of exceptions and proof of service. Trinnaman avers both that portions of SEIU's statement of exceptions were illegible and that SEIU's proof of service by facsimile failed to comply with PERB Regulation 32135(d). Specifically, avers Trinnaman, SEIU's proof of service: (1) did not indicate the number of pages being transmitted as required by PERB Regulation 32135(d)(2); (2) did not include the time of transmission as required by PERB Regulation 32135(d)(3); and (3) did not include the PERB case number as required by PERB Regulation 32135(d)(4).

Trinnaman also avers that on April 15, 2014, he informed SEIU by e-mail that the facsimile transmission was illegible, and that in response he received later that day an electronic version of SEIU's statement of exceptions as an e-mail attachment. The Court contends, however, that it had not formally agreed to accept electronic service of documents in this matter and therefore SEIU was not permitted to use electronic service.

SEIU submitted neither opposition nor documentation in response to the Court's appeal and the Trinnaman declaration.

The Court is incorrect in its assertion that it must formally agree to electronic service. PERB Regulation 32140(b) states that there are two methods by which a party agrees to accept electronic service of documents. The first method is by serving notice on all parties that it will accept electronic service of documents in that matter. The Court correctly asserts that it has not served such notice in this case. However, a party also agrees to accept electronic service in

a case by electronically filing any document with the Board.⁴ (PERB Reg. 32140(b)(2).) The Court has electronically filed at least three documents with the Board in this case: its initial position statement (electronically filed on October 29, 2013); its supplemental position statement (electronically filed November 6, 2013); and its reply in support of its motion for summary judgment (electronically filed February 24, 2014). Thus, we conclude that pursuant to PERB Regulation 32140(b)(2), the Court has availed itself of electronic filing and thus has agreed to accept electronic service of documents filed in this case.

However, our analysis does not end there. SEIU did not file proof of electronic service of its statement of exceptions and SEIU has not argued that it properly served the statement of exceptions electronically on April 15, 2014. The only proof of service filed with PERB by SEIU concerns the April 14, 2014, service by facsimile and U.S. mail. We are thus unable to determine whether SEIU's April 15, 2014, electronic service of its statement of exceptions complied with PERB Regulation 32135(d). We conclude that SEIU's facsimile service was incomplete and thus that SEIU perfected service of its exceptions on the Court on April 14, 2014, only by U.S. mail. Under PERB Regulation 32130(c), a "five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California." We conclude, therefore, that the deadline for submission of the Court's response to SEIU's statement of exceptions was twenty-five (25) days following April 14, 2014, or May 9, 2014. Since the Court's response was filed with PERB on May 8, 2014, the response was timely filed.

⁴ In our regulations, "'Board' means the five-member Public Employment Relations Board, any individual Board member or any Board agent." (PERB Reg. 32020, emphasis added.)

ORDER

The Public Employment Relations Board Appeals Assistant's administrative determination in Case No. LA-CE-43-C is hereby REVERSED. The San Bernardino County Superior Court's response to Service Employees International Union, Local 721's statement of exceptions is deemed timely filed.

Chair Martinez and Member Banks joined in this Decision.